

September 6, 2001

Honorable Bob Graham, Chairman  
Select Committee on Intelligence  
United States Senate  
211 Hart Office Building  
Washington, D.C. 20510

Honorable Richard C. Shelby, Vice-Chairman  
Select Committee on Intelligence  
United States Senate  
211 Hart Office Building  
Washington, D.C. 20510

Re: Intelligence Authorization Act and Criminal Penalties for Leaking Classified Information

Dear Chairman Graham and Vice-Chairman Shelby:

We were pleased to learn that you are reconsidering including a provision in this year's intelligence authorization bill a provision which would have criminalized the disclosure of classified information to unauthorized individuals. We write to impress upon you the jurisdictional and serious substantive concerns we have with the criminalization of all leaks of classified information in the event further deliberations regarding this matter arise.

With regard to jurisdiction, a provision prohibiting the unauthorized disclosure of classified information is within the House Judiciary Committee's jurisdiction. We are enclosing a letter dated August 13, 2001 from Chairman Sensenbrenner to Chairman Goss confirming his intention to "seek immediate referral of any legislation that incorporates criminal provisions addressing the unauthorized disclosure of classified information." Such a referral inevitably would result in a serious roadblock to consideration in the House of an intelligence authorization bill that contained such a provision.

Aside from the jurisdictional issue, in our view there currently are sufficient laws in place to protect against the release of classified information that could impact the public safety, defense or national security. Current law already makes it illegal to leak certain national defense

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information (18 U.S.C. 793), disclose information to aid foreign governments (18 U.S.C. 794), disclose intelligence on communication techniques (18 U.S.C. 798), and identify covert agents (15 U.S.C. 421). Moreover, persons with a security clearance can lose their clearance and their job if they leak information.

In addition, such a provision has profound First Amendment implications as it would make journalists the government's first line of defense against leaked information. While the provision might not criminalize journalists who receive leaked information, we are concerned journalists will be the first to be subpoenaed by the government to disclose their sources – and threatened with jail if they refuse to do so. The chilling effect on government officials to disclose information and on journalists to receive such information goes to the very heart of the ability of the public to remain informed about matters of critical public interest and which often relate to governmental misdeeds.

Since the Executive Branch asserts unilateral authority to define what information should be classified, criminalizing the disclosure of such information grants any Administration a blank check to classify - and thus criminalize - any leaking they do not like. As the bipartisan Commission on Protecting and Reducing Government Secrecy found in 1997, the government's classification predisposition "is stamp, stamp, stamp." The leverage given the government by criminalizing the disclosure of documents stamped as classified may well be to increase the incentive to over-classify documents that clearly should be in the public domain.

The Congress has consistently rejected these types of provisions for the past 50 years. Because of the jurisdictional and substantive concerns many Americans have with this provision, we urge you to exclude such a hostile provision from any further legislation considered by your Committee.

Thank you for your attention to this very important matter.

Sincerely,

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John Conyers, Jr.  
Ranking Member  
Committee on the Judiciary

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Bob Barr  
Chairman  
Subcommittee on Commercial and  
Administrative Law

Enclosure

cc: Hon. Patrick J. Leahy  
Hon. Orrin G. Hatch  
Hon. F. James Sensenbrenner, Jr.  
Hon. Porter Goss  
Hon. Nancy Pelosi